



January 30, 2002

---

## SENATE BILL No. 439

---

DIGEST OF SB 439 (Updated January 28, 2002 3:29 PM - DI 77)

**Citations Affected:** IC 14-8; IC 14-26; IC 14-28; IC 36-9.

**Synopsis:** County ditch maintenance permits. Provides that the department of natural resources must issue a county drainage board a permit for the reconstruction or maintenance of a regulated drain within 150 days after a complete request is submitted to the department. Allows the department to make recommendations to the county drainage board. Provides exemption from certain permit requirements for all reconstruction or maintenance projects on a stream or an open regulated drain, regardless of the length of the stream or open drain. (Under current law, the exemption applies only if the total length of the stream or open drain is not more than ten miles.) Repeals the definition of "total length" in reference to the length of a stream. Makes certain other changes.

**Effective:** July 1, 2002.

---

---

**Ford, Kenley**

---

---

January 14, 2002, read first time and referred to Committee on Natural Resources.  
January 29, 2002, reported favorably — Do Pass.

---

---

C  
o  
p  
y

SB 439—LS 7029/DI 77+



January 30, 2002

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

## SENATE BILL No. 439

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 14-26-5-7.4 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 7.4. If a request for a  
3 permit is submitted under this chapter by or for a county drainage  
4 board for a project for the reconstruction or maintenance of a regulated  
5 drain under IC 36-9-27, the department shall approve ~~or refuse~~ the  
6 request within one hundred fifty (150) calendar days after the request  
7 is deemed complete by the department. A request held more than one  
8 hundred fifty (150) calendar days by the department without being  
9 ~~either~~ approved ~~or refused~~ shall be considered approved.
- 10 SECTION 2. IC 14-26-5-7.6 IS AMENDED TO READ AS  
11 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 7.6. ~~(a)~~ If the  
12 department refuses to issue a permit after an investigation under  
13 section 5 of this chapter, the department shall promptly cause a public  
14 notice to be given by one (1) publication in a newspaper of general  
15 circulation published in the county in which the lake or any part of the  
16 lake is located. The notice must state that, on the date set forth in the  
17 notice, which may not be less than ten (10) days after the publication,

SB 439—LS 7029/DI 77+



C  
o  
p  
y

at a designated place in the county, the department will hold a hearing on the request and any interested person appearing at the hearing will have the right to be heard. The notice must contain a brief description of the proposed work and a statement of the department's reasons for refusing to issue a permit, and of the safeguards, if any, that the department considers necessary to protect the water level of the lake. The hearing shall be held by the director of the department or by the director's designee. A hearing held under this subsection is a nonevidentiary hearing. The rules of evidence and IC 4-21.5 do not apply to the hearing.

(b) If the request of a county drainage board for a permit for a project for the reconstruction and maintenance of a regulated drain under IC 36-9-27 is refused, the department shall publish the public notice required by subsection (a) within sixty (60) days after the permit is refused.

SECTION 3. IC 14-28-1-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 22. (a) As used in subsection (b)(1) with respect to a stream, "total length" means the length of the stream, expressed in miles, from the confluence of the stream with the receiving stream to the upstream or headward extremity of the stream, as indicated by the solid or dashed, blue or purple line depicting the stream on the most current edition of the seven and one-half (7 1/2) minute topographic quadrangle map published by the United States Geological Survey, measured along the meanders of the stream as depicted on the map.

(b) (a) This section does not apply to the following:

- (1) A reconstruction or maintenance project (as defined in IC 36-9-27) on a stream or an open regulated drain. if the total length of the stream or open drain is not more than ten (10) miles.
- (2) A construction or reconstruction project on a state or county highway bridge in a rural area that crosses a stream having an upstream drainage area of not more than fifty (50) square miles and the relocation of utility lines associated with the construction or reconstruction project if confined to an area not more than one hundred (100) feet from the limits of the highway construction right-of-way.
- (3) The performance of an activity described in subsection (c)(1) (b)(1) or (c)(2) (b)(2) by a surface coal mining operation that is operated under a permit issued under IC 14-34.
- (4) Any other activity that is determined by the commission, according to rules adopted under IC 4-22-2, to pose not more than a minimal threat to floodway areas.



C  
O  
P  
Y

(5) An activity in a boundary river floodway to which section 26.5 of this chapter applies.

~~(c)~~ (b) A person who desires to:

(1) erect, make, use, or maintain a structure, an obstruction, a deposit, or an excavation; or

(2) suffer or permit a structure, an obstruction, a deposit, or an excavation to be erected, made, used, or maintained;

in or on a floodway must file with the director a verified written application for a permit accompanied by a nonrefundable fee of fifty dollars (\$50).

~~(d)~~ (c) The application for a permit must set forth the material facts, together with plans and specifications for the structure, obstruction, deposit, or excavation.

~~(e)~~ (d) An applicant must receive a permit from the director for the work before beginning construction. The director shall issue a permit only if, in the opinion of the director, the applicant has clearly proven that the structure, obstruction, deposit, or excavation will not do any of the following:

(1) Adversely affect the efficiency of or unduly restrict the capacity of the floodway.

(2) Constitute an unreasonable hazard to the safety of life or property.

(3) Result in unreasonably detrimental effects upon fish, wildlife, or botanical resources.

~~(f)~~ (e) In deciding whether to issue a permit under this section, the director shall consider the cumulative effects of the structure, obstruction, deposit, or excavation. The director may incorporate in and make a part of an order of authorization, conditions and restrictions that the director considers necessary for the purposes of this chapter.

~~(g)~~ (f) A permit issued under this section:

(1) is void if construction is not commenced within two (2) years after the issuance of the permit; and

(2) to:

(A) the Indiana department of transportation or a county highway department, if there is any federal funding for the project; or

(B) an electric utility for the construction of a power generating facility;

is valid for five (5) years from the date of issuance and remains valid indefinitely if construction is commenced within five (5) years after the permit is issued.

~~(h)~~ (g) The director shall send a copy of each permit issued under

C  
o  
p  
y



1 this section to each river basin commission organized under:

2 (1) IC 14-29-7 or IC 13-2-27 (before its repeal); or

3 (2) IC 14-30-1 or IC 36-7-6 (before its repeal);

4 that is affected.

5 (†) (h) The permit holder shall post and maintain a permit issued  
6 under this section at the authorized site.

7 SECTION 4. IC 14-28-1-34 IS AMENDED TO READ AS  
8 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 34. A person who fails  
9 to comply with section ~~22(†)~~ **22(h)** of this chapter commits a Class D  
10 infraction. Each day a person violates section ~~22(†)~~ **22(h)** of this  
11 chapter constitutes a separate infraction.

12 SECTION 5. IC 36-9-27-53.5 IS AMENDED TO READ AS  
13 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 53.5. (a) A county  
14 surveyor or board planning to perform a project for the reconstruction  
15 or maintenance of a regulated drain under IC 36-9-27 that:

16 (1) is subject to regulation under:

17 (A) IC 14-26-5; or

18 (B) IC 14-28-1; or

19 (2) requires an individual permit under Section 404 of the federal  
20 Clean Water Act (33 U.S.C. 1344);

21 shall request an onsite field review of the project through a written  
22 notification of the division of water of the department of natural  
23 resources (referred to as "the division" in this section).

24 (b) Not more than fourteen (14) days after it receives a notification  
25 under subsection (a), the division shall contact the county surveyor or  
26 the designee of the county surveyor and the department of  
27 environmental management to establish a date, time, and location for  
28 the onsite field review.

29 (c) The onsite field review shall be conducted by a team consisting  
30 of:

31 (1) one (1) or more representatives of the county;

32 (2) one (1) or more representatives of the department of natural  
33 resources, including an engineer from the division of water;

34 (3) one (1) or more representatives of the department of  
35 environmental management; and

36 (4) if applicable, representatives of the local soil and water  
37 conservation district.

38 (d) Not more than thirty (30) calendar days after the completion of  
39 an onsite field review under this section, the division shall provide the  
40 county surveyor with a written summary of the review. The summary  
41 must contain the following:

42 (1) A narrative and map defining the project location.

C  
o  
p  
y



(2) A description of the proposed work.

(3) A list of conditions that:

(A) the department of natural resources would ~~place on a permit~~ **recommend** to mitigate any unreasonable or detrimental effects that may occur as a result of the proposed work; **and**

(B) the department of environmental management would place on a certification to comply with Section 401 of the federal Clean Water Act (33 U.S.C. 1341), if it is possible to ensure compliance with Section 401 by placing conditions on the certification. ~~or~~

~~(C) both departments referred to in this subdivision would place on a permit or certification.~~

(e) The department of natural resources may not ~~require or~~ recommend the following as conditions for a permit for a project for the reconstruction or maintenance of a regulated drain:

(1) Deed restrictions in connection with the proposed work.

(2) Conservation easements in connection with the proposed work.

(3) Tree planting or tree retention within the easement of the regulated drain, if:

(A) the project involves construction on only one (1) side of the drain;

(B) vegetation on the opposite overbank will not be disturbed; and

(C) the board agrees to establish a suitably sized vegetated filter strip consisting of grasses and legumes along the side of the drain on which the construction will occur.

(f) For the purposes of subsection (e)(3), a project involves construction on only one (1) side of a regulated drain if the work is limited to the entire area:

(1) below the top of the banks; and

(2) within the drainage easement on one (1) side; of the stream or open drain.

(g) A county surveyor or board that is aggrieved by the permit conditions disclosed under subsection (d)(3) has the right to enter into further negotiations with ~~the department of natural resources and~~ the department of environmental management in order to obtain a mutually agreeable set of permit conditions.

(h) If the permit conditions disclosed under subsection (d)(3) concerning a project for the reconstruction or maintenance of a regulated drain are acceptable to the county surveyor and board, the

C  
o  
p  
y



1 conditions:

2 (1) are binding upon the department of natural resources; and

3 (2) may not be changed by the department of natural resources.

4 However, subdivisions (1) and (2) cease to apply to the permit  
5 conditions disclosed under subsection (d)(3) concerning a project if an  
6 application for a permit for the project is not submitted within two (2)  
7 years after the onsite field review.

8 SECTION 6. IC 14-8-2-281.5 IS REPEALED [EFFECTIVE JULY  
9 1, 2002].

C  
o  
p  
y



## SENATE MOTION

Mr. President: I move that Senator Kenley be added as second author of Senate Bill 439.

FORD

C  
o  
p  
y





## COMMITTEE REPORT

Mr. President: The Senate Committee on Natural Resources, to which was referred Senate Bill No. 439, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 439 as introduced.)

FORD, Chairperson

Committee Vote: Yeas 7, Nays 0.

C  
o  
p  
y

SB 439—LS 7029/DI 77+

